

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: June 8, 2009

TO: The Honorable Mayor and City Council

FROM: Jan I. Goldsmith, City Attorney

SUBJECT: *Supplement to Children's Pool / Seals Debate*

MISCONCEPTIONS ABOUT THE CHILDREN'S POOL/SEALS DEBATE

This community should have an open debate about the children's pool and the seals. I hope it gets to the point where the community- through our elected representatives- is empowered to make a decision.

As we debate, here are a few misconceptions I would like to correct:

1. Ellen Browning Scripps never owned this beach, did not grant a trust to anyone and there was no agreement with her. The beach is owned by the State of California and it is the State that transferred the beach to the City in trust. Ms. Scripps asked and received permission of the State to build the wall. She was thanked, as she and her family should be today, for this and other gifts they have given to our community. But, she did not ask for an agreement and there was none.
- 2 The only property rights involved with this beach belong to the State of California. Public entities that own land have property rights. As opined by the Attorney General, if the State wants to change the terms of this trust, it can do so as the property owner.
3. With limited exceptions, federal law prohibits removal of the seals. Whether those exceptions apply is subject to litigation. If they do apply, federal law dictates the method of removal- and it is quite involved. Hence, the \$700,000 cost. The federal government has instructed us in writing that allowing dogs to harass the seals is a federal crime and they will enforce the law.
4. Removal of the seals does not end the matter. The state court order would also require that the beach sand be dredged, contaminants removed and the beach be reconfigured to its 1941 geography. The estimate on this is an additional \$1 million for the dredging plus the environmental impact report and a lot of years seeking approval from the Coastal

Honorable Mayor and City Council

June 8, 2009

Page 2

Commission and other agencies and defending environmental lawsuits.

5. In February, I recommended that the City Council sponsor legislation to change the terms of the trust to give the City discretion on use of the beach. In our opinion, that renders the state lawsuit moot and the issue can be decided by the City Council and Mayor, the way public policy issues are supposed to be decided. Senator Christine Kehoe has stepped up to the plate and introduced this legislation.

6. I believe this issue can finally be resolved through this legislation and then careful review of options by the City.

I hope this supplemental memorandum helps to clarify some of the misconceptions.